

**6. Shift Working:** More than one shift may be worked in a department or any section of a department of the industrial or commercial establishment at the discretion of the employer.

If more than one shift is worked, the workmen shall be liable to be transferred from one shift to another. No shift working shall be discontinued without one month's notice being given prior to such discontinuance, provided that no such notice shall be necessary if, as a result of the discontinuance of the shift, no permanent employee will be discharged. If as a result of discontinuance of shift working, any permanent workmen are to be discharged they shall be

discharged having regard to the length of their service in the establishment, those with the shortest term of service being discharged first. If shift working is restarted a week's notice thereof shall be given by posting a notice at the main entrance of the establishment and the time keeper's office, if any, and the workmen discharged as a result of the discontinuance of the shift, shall, if they present them selves at the time of the restarting of the shift, have preference in being re-employed, having regard to the length of their previous service under the establishment, those with the longest term of service being re-employed first.

### COMMENTS

**Shift working:** The chief feature of this Order is that although it is within the discretion of the employer to work more than one shift, yet shift working once started shall not be discontinued without giving one month's notice prior to such discontinuance; but no such notice shall be necessary if as a result of the discontinuance of the shift no permanent workman is to be discharged. The discontinuance of any shift is also in the discretion of the employer. If in consequence of discontinuance of any shift, any permanent workmen are to be discharged it shall be done on the basis of the length of their service, keeping in view the principle of "last come first go". The employer cannot pick and choose on the plea of efficiency. If a shift is restarted subsequently a week's notice thereof shall be given by posting a notice at the main entrance of the establishment and at the time-keeper's office, if any. If any of the workman discharged as a result of the discontinuance of any shift present themselves for re-employment at the time of the re-starting of the shift they would be preferred over outsiders and would be re-employed in order of seniority. The employer in this case too cannot pick and choose and prefer any other workman on ground of efficiency or any other reason.

This Standing Order would not, however, apply when no permanent workman is affected by the discontinuance of a shift but the workmen affected are only probationers, badlis, temporary or apprentices. In such a case neither any notice for discontinuance of shift working would be necessary nor would there be any obligation on the employer to re-employ the workmen discharged in consequence thereof.

**Violation of Standing Order:** The prosecution in case of violation of any Standing Order could not commence except with the previous

permission in writing of the Inspector or by the Inspector himself, appointed under S.O. of Ordinance, VI of 1968. 1987 PLC 860.

Under Section 46 of the Factories Act where a worker works on a shift which extends over mid-night, the day for him shall be deemed to be the period of 24 hours beginning when such shift ends and the he has worked after mid-night shall be counted towards the previous day. No extra pay for working in the night shift has been provided in law as has been done in other cases under Section 47 of the Factories Act. There is thus no substance for the demand for night shift allowance. 1962 PLC 888.

**7. Attendance and late coming:** All workmen shall be at work at the establishment at the time fixed and notified under Standing Order 3. Workmen attending late shall be liable to the deduction provided for in the Payment of Wages Act, 1936 (IV of 1936).

### COMMENTS

**Attendance and late coming:** The workmen are bound to keep themselves informed of the notices relating to the periods and hours of work as notified under Standing Order 3. Those who attend late are liable to suffer deduction in their wages as laid down in Section 9 of the Payment of Wages Act, 1936, hereinafter reproduced. This section provides for proportionate deduction from wages for the period a workman is absent from duty which includes late coming. The employer cannot disallow any worker to attend to his work for the simple reason that he is late. The utmost he can do is to deduct proportionate wages.

**Deductions for absence from duty:** (1) Deductions may be made under clause (b) of Section 7(2) only on account of the absence of an employed person from the place or places whereby the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

Insurance Scheme. Liability devolved upon the Insurance Company and not upon the employer. Forum for claim against the Insurance Company, was neither Commissioner nor the Labour Court. Petition before Commissioner was not competent. 1986 PLC 656.

**<sup>1</sup>[10-C. Payment of bonus: (1) Every employer making profit in any year shall <sup>2</sup>[pay for that year within the three months of the closing of] that year to the workmen who have been in his employment in that year for a continuous period of, not less than ninety days a bonus in addition to the wages to such workmen.**

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1. Standing Order 10-C added by the Labour Laws Ordinance, IX of 1972, Sec. 2 and Sch

(2) The amount of the bonus payable shall,--

(a) if the amount of the profit is not less than the aggregate of one month's wages of the workmen employed, be not less than the amount of such aggregate, subject to the maximum of thirty, per cent. of such profit.

**Illustration 1:** If the profit is Rs. 1,20,000.00. and the aggregate of one month's wages of the workmen is Rs. 30,000.00, the amount of bonus payable shall be not less than the aggregate of one month's wages, that is to say, Rs. 30,000.00

**Illustration 2:** If the profit is Rs. 33,000.00 and the aggregate to one month's wages of the workmen is also Rs. 30,000.00, the amount of bonus payable shall be not less than thirty per cent. of the profit, that is to say, Rs. 9,000.00;]

(b) If the amount of the profit is less than the aggregate referred to in paragraph (a), be not less than fifteen per cent. of such profit. ✓

(3) The bonus payable to a workman entitled thereto under clause (1) shall bear to his monthly wages the same proportion as the total bonus payable by the employer bears to the aggregate of the wages referred to in paragraph (a) of clause (2) and shall be paid either in cash or in N.I.T. Units of equivalent value at the option of such workman.

(4) Nothing in this section shall be deemed to affect the right of any workman to receive any bonus other than that payable under clause (1) to which he may be entitled in accordance with the terms of his employment or any usage or any settlement or an award of a Labour Court established under the Industrial Relations Ordinance, 1969 (XXIII of 1969).

**Explanation:** For the purpose of this section,--

(a) "N.I.T. Units" means the Units referred to in the National Investment (Unit) Trust Ordinance, 1965 (VII of 1965);

(b) "Profit" means the "net profits" as defined in Section 87-C of the Companies Act, 1913 (VII of 1913); and

(c) "wages" does not for the purpose of calculating the bonus payable to a person under clause (1), include the bonus referred to in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (IV of 1936).

**Punjab Amendment:**

*[In Standing Order 10-C, in paragraph (4), in the Explanation, for sub-paragraph (b), the following shall be substituted:--*

*"(b) "Profit" means the 'net profit' as defined in the Companies Ordinance, 1984 (XLVII of 1984)."]*

**COMMENTS**

**Bonus:** Bonus, according to Dictionaries and judgments means a remuneration given to labour and such being different from and in addition to wages. Difference between wages and bonus. Bonus unlike wages is a payment contemplated by parties not to continue indefinitely. Word "bonus" as frequently used in our jurisprudence, however, indicates labour's share of employer's profits. Contention that once workman makes his employer agree to pay him bonus, same would be deemed to have become part of his wages, held, not sustainable. **PLD 1981 SC 495.**

**Employees':** Union producing no evidence while employers producing balance-sheet properly audited by two Chartered Accountants and official of the employers submitting himself for cross-examination with regard to contents of the affidavit presented by such official. Burden of proof which lay on employers with regard to the Profit and Loss Accounts for disputed period was discharged. Application for payment of bonus to employees was dismissed in circumstances. **1986 PLC 137.**

Earning of profit must be established before complaining violation of S.O. 10-C. Charge has to be brought home to the hit and accused is only to create a reasonable doubt. No evidence of profit to create liability to pay statutory bonus was produced. Mere notice issued by the Management under coercion and compelling circumstances could not be considered a declaration under Section 10-C. Plea of accused that no profit earned and

**Payment of bonus:** Bonus or profit bonus is allowable under this rule if employer makes profit in a year otherwise not. It is in addition to bonus payment under the terms of employment or usage of any settlement or an award of a Labour Court. It is payable in accordance with cl. (2) of this Order in a rateable proportion provided in cl. (3) either in case or N.I.T. Units of equivalent value at the option of the workman.

The amount of bonus payable shall if the amount of profit is not less than the aggregate of one month's wages of the workman employed, be not less than the amount of such aggregate, subject to the maximum of 30% of such profit; and if the amount of profit is less than the aggregate of one month's wages, be not less than 15% of such profits.

Where workman has been in employment for a period not less than 90 days the employer is bound to pay bonus. **1980 PLC 232.**

Word "or" appearing in clause (4) is disjunctive clause (4) confers right on workers to receive bonus as given in clause (1) over and above one payable under any award or agreement. Contention that only one bonus could be paid was held to be incorrect. **1975 PLC 167.**

The expression "no less than thirty percent". means equal to one month's wages. **1975 PLC 114.** Workers under earlier agreement having already been allowed bonus could not be doubly allowed such bonus under Sec. 100(c) as well. **1975 PLC 269.**

Basic wages means wages without allowances. Settlement providing payment of profit bonus of basic wages. Claim for bonus on basis of wages inclusive of cost of living allowance, in circumstances, was *held* sustainable. Negotiable bonus payable under settlement distinguished from statutory bonus. Cost of living allowance is part of wages only for the purpose of statutory bonus. **1981 PLC 636.**

Claim for bonus based on custom, practice, or usage can be recognised as a rule of Law only if ancient and must be invariably pleaded before the Trial Court and supported by unambiguous evidence. Solitary instance of payment of such bonus in a previous year is hardly sufficient to establish custom, usage or practice. **1975 PLC 511; PLJ 1975 Tr.C. (Lah.) 149.**

Employees of the Industrial Development Bank receiving bonus sines establishment of Bank (1961). Bonus not dependent upon or linked with profit. Rate of bonus increased under settlement from 1969 and the employees continuously receiving same at the enhanced rate upto 1975 at uniform rates. Employees in circumstances, became entitled to such bonus according to terms and conditions of service on the basis of usage and agreement. **1981 PLC 429.**

**1[2-A. Terms and conditions of Service to be given in writing: Every workman at the time of his appointment, transfer or promotion shall be provided with an order in writing, showing the terms and conditions of his service.]**

**3. Publication of working time: The periods and hours of work for all classes of workmen in each shift shall be exhibited in Urdu and in the principal language of workmen employed in the industrial or commercial establishment on**

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1. Order 2-A added by the Industrial and Commercial Employment (Standing Orders) (Amendment) Act, XXIII of 1973, S. 6(b).



notice boards maintained at or near the main entrance of the establishment and at the timekeeper's office, if any.

#### COMMENTS

**Working time:** This rule has been framed so that the employees may themselves know the working hours and may not in ignorance become late or absent or exceed in working.

**4. Publication of holidays and pay days:** Notices specifying:--

- (a) the days observed by the industrial or commercial establishment as holidays; and
- (b) pay days shall be posed on the said notice boards.

#### COMMENTS

**Holidays and pay days:** 'Pay day' mean the day of payment of the wages; and the holidays means all the close days with or without pay, provided for under statutes, custom or usage. This Order is to be read in conjunction with Section 5 and its contravention is punishable.

**5. Publication of wage rates:** Notices specifying the rates of wages payable to all classes of workmen and for all classes of work shall be displayed on the notice boards. ✓

#### COMMENTS

**Wage rates:** This rule to display the rates of wages is meant to benefit the illiterate workmen so that they may know their exact earning.

**1[12. Termination of employment:** (1) For terminating employment of a permanent workman, for any reason other than misconduct, one month's notice shall be given either by the employer or the workman.

One month's wages calculated on the basis of average wages earned by the workman during the last three months shall be paid in lieu of notice.

(2) No temporary workmen, whether monthly-rated, weekly-rated, daily-rated or piece-rated, and no probationer or badli, shall be entitled to any notice if his services are terminated by the employer, nor shall any such workman be required to give any notice or pay wages in lieu thereof to the employer if he leaves employment of his own accord.

(3) The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken, in case a work man is aggrieved by the termination of his services or removal, retrenchment, discharge or dismissal, he may <sup>2</sup>[take

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1. S.O. 12 subs. for the original by the Labour Laws (Amendment) Act, V of 1972.
  2. Subs. by the Industrial & Commercial Employment (Sanding Orders) (Amendment) Act, XXIII of 1973.

action in accordance with the provisions of Section 25-A of the Industrial Relations Ordinance, 1969 (XXIII of 1969), and thereupon the provisions of the said section shall apply as they apply to the redress of an individual grievance.

(4) Where the services of any workman are terminated, the wages earned by him and other dues, including payment for unavailed leave as defined in clause (1) of the Standing Order 8, shall be paid before the expiry of the second working day from the day on which his services are terminated.

(5) The services of a permanent or temporary workman shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in Standing Order 15.

(6) Where a workman resigns from service or his services are terminated by the employer, for any reason other than misconduct, he shall, in addition to any other benefit to which he may be entitled under this Ordinance or in accordance with the terms of his employment or any custom, usage or any settlement or an award of a Labour Court under the Industrial Relations Ordinance, 1969 (XXIII of 1969), be paid gratuity equivalent to 1[thirty] days] wages, calculated on the basis of the 2[wages admissib]e to him in the last month of service if he is a fixed-rated workman or the highest pay drawn by him during the last twelve months if he is a piece-rated workman] for every completed year of service or any part thereof in excess of six months:

Provided that, where the employer has established a Provident Fund to which the workman is a contributor and the contribution of the employer to which is not less than the contribution made by the workman, no such gratuity shall be payable for the period during which such Provident Fund has been in existence 3[:.]

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1. Subs. by the Labour Laws (Amendment) Act, XI of 1994.
  2. Subs. by the Industrial & Commercial Employment (Standing Orders) (Amendment) Act, XXIII of 1973.

<sup>1</sup>[Provided further that if through collective bargaining the employer offers and contributes to an "Approved Pension Fund" as defined in the Income Tax Ordinance, 2001 (XLIX of 2001), and where the contribution of the employer is not less than fifty per cent of the limit prescribed in the aforesaid Ordinance, and to which the workman is also a contributor for the remaining fifty per cent or less, no gratuity shall be payable for the period during which such contribution has been made.]

(7) A workman shall be entitled to receive the amount standing to his credit in the Provident Fund, including the contributions of the employer to such Fund, even if he resigns or is dismissed from service <sup>2</sup>[\*\*\*\*].

<sup>3</sup>(8) Where a workman dies while in the service of the employer, his dependant shall be paid gratuity in accordance with the provisions of clause (6):

Provided that no payment of gratuity in such cases shall be made otherwise than by a deposit with the Commissioner, who shall proceed with the allocation of the deposit to the dependant of the deceased in accordance with the provisions of Section 8 of the Workmen's Compensation Act, 1923 (VIII of 1923).

(9) If the employer fails to deposit the amount of the gratuity under clause (8) the dependant of the deceased may make an application to the Commissioner for the recovery of the amount thereof.

**Explanation:** "Commissioner" and "dependant" in this Standing Order shall have the same meanings as are

1. Proviso added by the Finance Act, IV of 2007.
2. Certain words omitted by the Industrial and Commercial Employment (Standing Orders) (Amendment) Act, XXIII of 1973.
3. Clauses (8) and (9) added by the Industrial and Commercial Employment (Standing Orders) (Amendment) Act, XXIII of 1973.

respectively assigned to them in the Workmen's Compensation Act, 1923 (VIII of 1923).]

### **Punjab Amendment:**

<sup>1</sup>[In Standing Order 12, in paragraph (3), for the word and figure "Section 25-A", the word and figure "Section 33" shall be substituted].

### **COMMENTS**

**Objects:** Objects of the company being to levy fees for services tendered by it and also to realise royalty or sale price in respect of documents or any information produced by company, but such money could only be utilized for running of organisation and promotion of its object which were entirely non-profit oriented. Company though registered under the Companies Ordinance, 1984 but objects of company being rendering of technical assistance to Government, semi-Government, private organisations and individuals, it was admittedly a non-profit making organisation. Such company, therefore, was not "Commercial Establishment or 'industrial establishment' and its employee was not a "workman" for the purposes of S.O. 12(3) and Standing Orders 12 and 15 could not also be invoked in such a case. Employees of such organisation were governed by the terms and conditions of his appointment. 1984 PLC 1400.

**Applicability of Orders:** Clauses (6) and (8) of this Order shall not, in the first instance, apply to any industrial establishment wherein not more than forty-nine persons were employed on any day during the preceding twelve months, but the Government may by notification in the official Gazette, extend all or any of these provisions to any such industrial establishment or class of establishments.

Rebuttal provisions of the Ordinance VI of 1968 were applicable to employer establishment in the absence of rebuttal. Application by worker for encashment of leave, and for grant of gratuity was maintainable in circumstances. 1986 PLC 59.

Ordinance, VI of 1968 would be applicable to all industrial/commercial establishments employing twenty or more workers and such classes of industrial and commercial establishments as Government may specify through notification. Karachi Dock Labour Board, being neither industrial concern nor employer, nor a commercial concern. Ordinance, VI and consequently Standing Orders, held, would not apply, to functioning at such Board. Similarly the Workmen's Compensation Act would not be applicable to the Dock Labour Board. 1986 CLC 1619.

In the absence of any exclusion clause in the Road Transport Works Ordinance (XXVIII of 1961) whatever is said in its Section 7 is not restrictive. Gratuity payable under settlement can be claimed under the Ordinance. **1987 PLC 777.**

Workmen was held to be entitled to pursue remedy provided to him under S.O. 12(3) of the Standing Orders Ordinance, 1968 and also under Section 25-A of I.R.O. as no amendment is made in S. O. 12 (3) regarding forum and procedure available to workman having a thereunder after promulgation of Ordinance XXI of 1979. **1981 PLC 898.**

Cane Inspector employed by the Sugar Mills performing no clerical or manual work and supervising work of Fieldmen was not a workman and was not entitled to maintain grievance petition against the removal from service. **1987 PLC 806.**

Deputy Traffic Manager of the Sindh Road Transport Corporation is not a "worker" under the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 and was not entitled to file grievance petition against the termination of service. **1986 PLC 193.**

Workman has been classified in categories of permanent/probationer Badli, temporary and apprentice. Standing Order 12 of Ordinance, VI of 1968 would be applicable to those workmen, who were shown as monthly-rated, weekly-rated, daily-rated or piece-rated. Daily-rated worker however, is not found in the definition of Section 2(g) of Ordinance, 1968. **1987 PLC 200.**

"Workman" would include within its ambit only such persons who were employed in an industry for hire or reward, barring those who for the purposes of any proceedings under the Industrial Relations Ordinance, in relation to industrial dispute have been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or in consequence of such dispute. Section 25-A(4) providing that where application was brought before the Labour Court it would be disposed of as if same related to industrial dispute, would, however relate to powers and procedure of the Labour Court and same could neither enlarge definition of 'workman' as given in Ordinance, XXIII of 1969 nor convert such application into industrial dispute. After deletion of sub-section (6) from Section 25-A. Industrial Relations Ordinance, only such persons could approach Labour Court in respect of their removal, dismissal, etc., from service who fell within the ambit of definition of "workman" in Ordinance, VI of 1968. Where, however, by virtue of any law, provisions of Ordinance, VI of 1968, did not apply to an employee, application filed by him before the Labour Court would be incompetent. **1987 PLC 846.**